

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

[NAME(S)])	
)	
PLAINTIFF(S))	
)	
v.)	CIVIL No. *
)	
[NAME(S)])	
)	
DEFENDANT(S))	

JURY INSTRUCTIONS

These instructions will be in three parts: first, general rules that define and control your duties as jurors; second, the rules of law that you must apply in deciding whether the plaintiff has proven [his/her] case; and third, some rules for your deliberations. You may take these instructions with you to the jury room.

I. GENERAL RULES CONCERNING JURY DUTIES

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law, as you gave your oaths to do at the beginning of this case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions, or

into anything I may have said or done, any suggestion as to what verdict you should return—that is a matter entirely for you to decide.

The lawyers may refer to some of the governing rules of law in their arguments. If any differences appear to you between what they say and what I say in these instructions, my instructions control.

BURDEN OF PROOF

[Plaintiff] has the burden of proving [his/her] case by what is called a preponderance of the evidence. That means that [plaintiff] has to produce evidence that, considered in the light of all the facts, leads you to believe that what [he/she] claims is more likely true than not. If [plaintiff] fails to meet this burden, the verdict must be for [defendant].

EVIDENCE

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of witnesses, here in Court or by deposition, both on direct and cross-examination, regardless of who called the witness; (2) the exhibits that have been received into evidence; and (3) any facts to which the lawyers have agreed or stipulated.

“Stipulated facts” means there is no controversy or dispute about their existence. You must regard and treat them as proven facts in the case.

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the stipulations and the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you.

- (1) Arguments and statements by lawyers are not evidence;

- (2) Questions and objections by lawyers are not evidence;
- (3) Testimony I have instructed you to disregard is not evidence; and
- (4) Anything you may have seen or heard when the Court was not in session is not evidence.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a fact or chain of facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

CREDIBILITY OF WITNESSES

In deciding what the facts are, you must consider all the evidence. In doing this, you must decide which testimony to believe and which testimony not to believe. You may disbelieve all or any part of any witness's testimony. You might want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.

In deciding whether to believe a witness, keep in mind that people sometimes forget things. You need to consider therefore whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or with only a small detail.

The weight of the evidence presented by each side does not necessarily depend on the number of witnesses testifying on one side or the other. You must consider all the evidence in the case, and you may decide that the testimony of a smaller number of witnesses on one side has greater weight than that of a larger number on the other or vice versa.

All of these are matters for you to consider in deciding the facts.

OPINION EVIDENCE, EXPERT WITNESSES

You have heard testimony from people described as experts. People who, by education and experience, have become expert in some field may state their opinion on matters in that field and may also state their reasons for the opinion.

Expert opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

[may omit the following ¶]

In this trial, these witnesses were, at times, asked hypothetical questions and they gave answers to such questions. In answering a hypothetical question, an expert witness must accept as true every asserted fact stated therein, but this does not mean that you must. If you

find that assumed facts are not proven, you should disregard the answer based on the hypothetical question.

LIABILITY OF CORPORATIONS

[name], as a corporation, can act only through its employees. A corporation is responsible for the acts of its agents, servants and employees when they are acting within their authority.

The fact that the defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

II. RULES OF LAW

DIRECTIONS TO LAWYERS CONCERNING PREPARATION OF PROPOSED INSTRUCTIONS

PREPARE FOR INSERTION HERE YOUR PROPOSED INSTRUCTIONS CONCERNING THE CLAIMS AND DEFENSES, SPECIAL ISSUES AND DAMAGES IN THE FOLLOWING FORMAT AND SEQUENCE.

[Note that Judge Hornby has drafted proposed pattern jury instructions following First Circuit law for cases of employment discrimination, excessive force, railroad employee personal injury and maritime employee personal injury. They are available on-line at the District of Maine website: <http://www.med.uscourts.gov>.]

1. Description of the plaintiff's claim(s), followed by:
 - A. Enumeration of the essential elements of the claim(s);
 - B. Definition of key terms used in enumerating the elements of the claim(s); and other special instructions, if any, necessary to further explain or qualify the claim(s).

2. Description of the defendant's defense(s) and counterclaim(s), if any, followed by:

- A. Enumeration of the essential elements of the defense(s) and counterclaim(s), if any;
 - B. Definition of key terms used in enumerating the essential elements of the defense(s) and counterclaims; and other special instructions, if any, necessary to explain further or qualify the defense(s) and/or the counterclaim(s).
3. Enumeration of plaintiff's (and counterclaimant's) recoverable elements of damage and explanation, as appropriate, of each element.

NOTE: In submitting your proposed instructions it is not necessary to duplicate or request the Court's standard instructions that precede and follow Section II. Those instructions will be given in every case, subject to deletion of irrelevant instructions (e.g., delete expert instruction if no expert).

III. JURY DELIBERATIONS

I come now to the last part of the instructions, the rules for your deliberations.

When you retire you will discuss the case with the other jurors to reach agreement if you can do so. You shall permit your foreperson to preside over your deliberations and your foreperson will speak for you here in Court. Your verdict must be unanimous.

CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions.

REACHING AGREEMENT

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to their views.

Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is right.

This case has taken time and effort to prepare and try. There is no reason to think it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. If it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the jurors in both the majority and the minority should reexamine their positions to see whether they have given careful consideration and sufficient weight to the evidence that has favorably impressed the jurors who disagree with them. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict but, of course, only if each of you can do so after having made his or her own conscientious determination. Do not surrender an honest conviction as to the weight and effect of the evidence simply to reach a verdict.

RETURN OF VERDICT FORM

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it. Do not give that form to the jury officer outside your door. Instead, just give him a note that states that you are ready to return to the courtroom.

After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open Court.

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.